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Via Electronic Filing

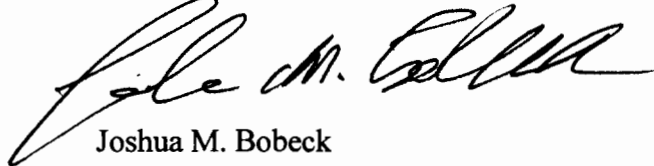
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: **Notice of Ex Parte Meeting CC Docket Nos. 04-313, 01-338**

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, this will provide notice that on September 27, 2004, Paul W. Hobby, President of Alpheus Communications, L.P. (formerly known as El Paso Networks, L.P.), and the undersigned met with Jeremy Miller, Associate Chief of the Policy Division of the Wireline Competition Bureau, and Russell Hanser, Ian Dillner, Gail Cohen, Marcus Maher, Tim Stelzig and Carol Simpson, also of the Policy Division. During the meeting, Alpheus presented the views set forth in the attached document which it left with the attendees.

Sincerely,



Joshua M. Bobeck

Counsel for Alpheus Communications, L.P.

Enclosure

cc: Attendees (w/o attachment)



ALPHEUS

Dark Fiber: Promoting Facilities Based Competition

Sep. 27, 2004



Poster child for the innovation and investment intended by the Act.

- Unbundled access to dark fiber promotes facilities based investment
- There can be no “arbitrage” with dark fiber; it is an idle raw material that requires investment and expertise to utilize.
- Dark fiber unbundling adds new capacity to local transport market
- Neither financial markets nor municipalities will allow each company to lay separate fiber down every street;
- Dormant facilities the ILEC is unlikely to ever use

Encouraging a Vibrant Wholesale Market

- Not every carrier can provide all services to all
 - Need efficient wholesale providers in competitive matrix
- Should not expect CLECs to transform to 100% facilities-based overnight
- Progression more gradual
- As UNE-P goes away, dark fiber becomes a much more important element in enabling the transition to facilities-based competition.
- Re-affirm TRO findings on common carriage

Walking Talking Impairment Test

- Alpheus does not want to be an involuntary tenant
- preference is to deploy its own fiber; where financial metrics do not allow and alternatives do not exist, Alpheus needs UNEs
- *No special access offering for dark fiber.*
- Cannot achieve efficient ownership of its own facilities overnight

Fiber Impairment Test

- Must bear relationship to fiber availability
 - Limited wholesale availability of dark fiber
 - When it is available requires additional investment & construction
- Should recognize the economics of fiber deployment *today* compared to those made between before
- Should rest on the foundation established in the *TRO*

Enforcement & Transition

- ILECs refuse to make fiber available on any terms
- Economic motivation to hoard dormant fiber: Inhibit Facilities Based Competitionturning away very profitable business in order to retain broadband infrastructure is anti-competitive on its face.
- Restraint of trade in idle facilities is a naked abuse of market power.
- ILECs create roadblocks to facilities based competition
 - Collocation process
 - Lengthy process to locate and obtain ILEC conduit
- Transition process for UNE dark fiber must account for availability of ILEC conduit

Conclusion

Alpheus is the best example of what the 1996 Act intended to create. We provide innovative, next generation products that allow enhanced transport choices for carriers and their customers. We develop, deploy and operate our own facilities-based network that strategically leverages dormant fiber infrastructure to create a superior broadband backbone that is both fast and protocol agnostic. No one else can duplicate our service for Metro Texas.